

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

ARCO ENVIRONMENTAL
REMEDICATION, L.L.C.,

Plaintiff,

vs.

RDM MULTI-ENTERPRISES, INC.,

Defendant.

RDM MULTI-ENTERPRISES, INC.,
and DOMINIC AND EVELYN
DIFRANCESCO,

Counter-Claimants,

vs.

ATLANTIC RICHFIELD COMPANY,
ARCO ENVIRONMENTAL
REMEDICATION, L.L.C., and SANDY
STASH,

Counter-Defendants.

CV-99-45-BU-CSO

ORDER GRANTING
PLAINTIFF'S PETITION FOR
REFERRAL FOR CRIMINAL
CONTEMPT CHARGES

On September 6, 2006, the Court held a Show Cause hearing on Plaintiff ARCO Environmental Remediation, L.L.C.'s ("AERL") Petition for Contempt (*Court's Doc. No. 217*). AERL was represented by John Davis and Lisa H. Levert. No one appeared on behalf of Defendant and Counter-Claimants or Ron DiFrancesco.

In the Court's August 15th Order (*Court's Doc. No. 220*), the Court ordered that the United States Marshal Service personally serve upon Ron DiFrancesco the Court's order setting the show cause hearing. At the hearing, the Court inquired with Deputy United States Marshal Charles Olson and was informed that the Marshals and Butte-Silver Bow law enforcement made numerous attempts to personally serve Ron DiFrancesco. Law enforcement, however, was unsuccessful and Ron DiFrancesco was not served. Deputy Marshal Olson stated that it was law enforcement's belief that Ron DiFrancesco was evading service.

Further, the Notice of Electronic Filing of the Court's August 15th Order indicates that Evelyn DiFrancesco, as representative of RDM, was served with a copy of the Order by United States mail. Although Ron DiFrancesco was not personally served, it is the Court's belief that both Ron and Evelyn DiFrancesco had notice of the September 6th hearing. On September 1, 2006, both individuals filed affidavits opposing the "contempt charges". See *Court's Doc. Nos. 228 & 229*.

Based on Ron and Evelyn DiFrancesco's admissions in their affidavits, and statements made in their new civil case filing (See CV-06-67-BU-RFC, *Court's Doc. No. 1*), the Court concludes that the willful contempt found in this Court's order dated November 18, 2004, continues. The statements of RDM and the DiFrancesco's indicate that they either do not understand and/or

refuse to accept the Court's September 1, 2004, Judgment, which has been affirmed on appeal.¹ It does not appear that this Court's prior civil contempt finding changed RDM or the DiFrancesco's behavior. The Court does not believe that a second civil contempt order is appropriate here.

Having reviewed the written submissions and having heard oral argument by Mr. Davis, the Court at the hearing issued an oral ruling on the record. That oral ruling is confirmed herein.

Accordingly, IT IS HEREBY ORDERED that:

(1) AERL's Petition for Contempt is **GRANTED in part and DENIED in part**. AERL's Petition is **granted** as to its request for referral on criminal contempt charges and is **denied** as to AERL's request for civil contempt order.

(2) This case is hereby referred to the United States Attorney's Office for instituting criminal contempt proceedings under Federal Rule of Criminal Procedure 42.

(3) The Clerk is directed promptly to notify Assistant United States Attorney Carl Rostad at the United States Attorney's Office regarding this Order. The Clerk is further ordered promptly to forward the following documents to the United

¹ See for example paragraph 11 of Ron DiFrancesco's affidavit, in which he states in pertinent part: "It is the attorneys for AERL that are harassing me when RDM has Ingress and Egress from Deer-Lodge County for both slag Piles. By law this must be honored. No one can be permanently enjoined from their place of business...." *Ron DiFrancesco August 29, 2006, Aff.* at ¶ 11.

States Attorney's Office:

- (a) The Court's Judgment in this case (*Court's Doc. No. 175*);
- (b) Court's prior contempt Order (*Court's Doc. No. 204*);
- (c) The Ninth Circuit's affirmance of the Court's Judgment (*Court's Doc. No. 216*);
- (d) AERL's Petition for Contempt (*Court's Doc. No. 217*);
- (e) Court's Order setting Show Cause Hearing (*Court's Doc. No. 220*);
- (f) AERL's Additional Affidavits in Support of Petition for Contempt (*Court's Doc. No. 224*);
- (g) Affidavit of Ron DiFrancesco in Opposition to Contempt Charges (*Court's Doc. No. 228*);
- (h) Affidavit of Evelyn DiFrancesco in Opposition of Alleged Contempt (*Court's Doc. No. 229*);
- (i) Complaint filed in CV-06-67-BU-RFC;
- (j) Transcript of the September 6, 2006, Show Cause Hearing; and
- (k) Exhibit 1, entered at the Show Cause hearing (*Court's Doc. No. 225*).

(4) The Clerk of Court shall notify all parties of the making of this Order. The Clerk is further ordered to serve this Order upon Ron DiFrancesco at 315 Galaxy Drive, Butte, Montana, 59701, by certified mail, signed receipt requested.

DONE and DATED this 13th day of September, 2006.

/s/ Carolyn S. Ostby

Carolyn S. Ostby
United States Magistrate Judge